

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities

CC Docket No. 98-67

Interstate Telecommunications Relay Service (TRS) Fund Advisory Council Proposed Guidelines for the Recovery of Costs Associated with Internet Protocol Relay Services

**Reply Comments of Hamilton Relay, Inc., Regarding the Interstate Telecommunications
Relay Service (TRS) Fund Advisory Council Proposed Guidelines for the Recovery of Costs
Associated with Internet Protocol Relay Services**

Hamilton Relay, Inc. (Hamilton), by its attorneys, submits these reply comments for three purposes: (1) to endorse the comments filed in support of proposed guidelines for the recovery of costs from the Interstate TRS Fund associated with Internet Protocol telecommunications relay services (IP Relay) submitted by the Interstate TRS Fund Advisory Council (Advisory Council) on October 9, 2002,¹ (2) to support Sprint Corporation's (Sprint's) proposal for handling international IP Relay calls in view of the traffic distortions shown in the record; and (3) to emphasize the urgent need for the Commission to grant long-pending requests to waive the pay-per-call service (900 Service) and hearing carry over (HCO) requirements in order to launch

1 The Advisory Council developed its proposed guidelines in accordance with the Commission's direction in its April 2002 Declaratory Ruling and Further Notice of Proposed Rulemaking. Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Petition for Clarification of WorldCom, Inc., CC Docket No. 98-67, *Declaratory Ruling and Second Further Notice of Proposed Rulemaking*, 17 FCC Rcd 7779 (2002).

a genuinely competitive IP Relay marketplace and permit Hamilton to provide competitive IP Relay service as soon as possible.

Hamilton currently provides traditional relay services under contract with six states, including Nebraska, Idaho, Louisiana, Kentucky, Wisconsin, and Rhode Island. It plans to provide IP Relay to all 50 states as soon as the Commission acts favorably on Sprint's July 11, 2002 Petition for Limited Reconsideration seeking waiver of the requirements to provide 900 calling and HCO service as a prerequisite for TRS Fund reimbursement.

A. The Commission Should Adopt the Advisory Council's Guidelines for Recovery of IP Relay Costs from the Interstate TRS Fund

In the Declaratory Ruling, the Commission found that IP Relay services fall within the statutory definition of TRS and that providers are eligible to recover their costs in accordance with Section 225 of the Communications Act of 1934, as amended. The National Exchange Carrier Association, administrator of the TRS Fund, agreed with the Advisory Council's recommendation that the traditional TRS reimbursement rate should continue to apply to IP Relay minutes of use. NECA filed comments to add international usage data indicating that traffic patterns have changed dramatically through IP Relay service.

Hamilton agrees with Sprint that NECA's and the Council's findings are correct and should be adopted for domestic IP Relay traffic. As AT&T explained (pp. 2-3), the use of the traditional cost recovery method and reimbursement rate furthers two Commission policies by fostering "this innovative service" and providing consumers with the ability to choose among competing IP Relay providers. All of the comments agreed, as well, that the Advisory Council was wise to recommend monitoring of international calling because, since providers are not currently able to determine the origin of an IP Relay call, the service could be abused by callers engaging in what AT&T called (p. 4) "third country calling." The record supports the Advisory

Council's findings and recommendations for reimbursing domestic IP Relay calling, and the Commission should therefore adopt the guidelines.

B. The Commission Should Adopt Sprint's Proposal for International
 Calling via IP Relay

The monitoring of international calling patterns demonstrated traffic distortions that indicate likely abuse of the service to make "free" international calls. NECA studied the pattern of calls to international destinations to monitor international use, since current technology does not permit providers to identify the originating point for IP Relay communications. NECA found unmistakable evidence of distortions. It reported in its February 2, 2003 comments (p.4) that "IP Relay appears to have raised international TRS calling levels from less than 1% of the total to approximately 9%." NECA also found (ibid.) "a highly skewed call distribution pattern among foreign countries," with calls to one country amounting to one-third of one provider's total international minutes, almost 138% more than the provider's second highest volume international destination category.

Sprint supports the Advisory Council's findings and reimbursement proposal. Its comments also recognize that the data NECA has gathered on international use of IP Relay indicate that IP Relay service is being misused by callers without a legitimate need for relay services to make "free" international calls. Sprint consequently proposed (pp.2-3) a means to deal with international use of IP Relay, which Hamilton supports and urges the Commission to adopt. Sprint proposes amending the rules to allow providers "to charge end users established toll charges for IP Relay calls to any international point." This, in turn, Sprint explained, would require the initiation of some method other than Sent Paid calling, such as "calling card, collect,

prepaid card, third party billing, before the CA will call the foreign destination."² Hamilton agrees that this proposal would be fair to the community served by TRS providers because all callers using the public switched network must pay for international calls, and this approach is much less burdensome than the alternative of requiring registration by all IP Relay users. Hamilton urges the Commission to adopt Sprint's proposal promptly to spare consumers nationwide from having to contribute to the TRS Fund to support abusive use of the TRS system.

C. Fundamental Fairness, Competitive Neutrality and the Commission's Rules and Orders Require Expedited Commission Action to Waive the Established Mandatory Minimum Standards for IP Relay So Lawful Reimbursement Can Begin

1. Hamilton Cannot Compete in the IP Relay Market Because the Commission's Rules Condition Reimbursement on Providing HCO and 900 Service, which the Record Shows Are Technically Infeasible at this Time

As the Commission is aware, Hamilton has not been able to begin its IP Relay service yet. Its prudent business plan does not permit it to offer IP Relay Services until it is clear that it qualifies for lawful reimbursement from the interstate TRS Fund. Consequently, Hamilton has been diligently pursuing proper relief under the Commission's rules from the Declaratory Ruling and §64.604(c) minimum standards that make provision of HCO and 900 Services prerequisites for reimbursement for all IP Relay service providers. The record is now clear that current technology prevents carriers from complying with the requirement to provide HCO and 900 services that are "functionally equivalent" to those provided via the public switched network, as the very definition of relay services requires.³ The Declaratory Ruling (¶32) reported that

² *Id.* at 2 (footnote omitted).

³ Section 225(a)(3) defines "telecommunications relay services" as follows :
telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio.

Worldcom said providers were able to provide VCO, HCO,⁴ and speech-to-speech (STS) through IP Relay, provided that the customer has the appropriate customer premises equipment.⁵ It also cited three other commenters (Sprint, NAD, and TDI) that "believe that technological limitations make these services impossible at this point."⁶

On March 1, 2002, Worldcom informed the Commission that acceptable HCO service could not be provided via IP Relay. Worldcom explained

the technical limitations of customer premise equipment (CPE) and internet transmission made the quality of service for the provision of voice services, such as voice carry over (VCO), hearing carryover (HCO) and speech-to-speech (STS) via IP-Relay infeasible for the foreseeable future" ... [and] ... if relay providers attempted to offer these voice capabilities over IP-Relay before the technical conditions for quality service were available, relay operators would be unable to accurately communicate conversations. The result could be a degradation of relay service.⁷

The Commission waived the mandatory minimum standards for VCO to permit reimbursement without that function temporarily. But it apparently relied on Worldcom's initial claim of capability, which it cited, to hold (§32): "We see no reason why IP Relay cannot be used for the text leg of an HCO call, and therefore we do not waive this requirement."

See, also, Declaratory Ruling at ¶10.

⁴ The Declaratory Ruling defined HCO (n.77) as "[a] reduced form of TRS where the person with the speech disability is able to listen to the other end user and, in reply, the CA speaks the text as typed by the person with the speech disability. The CA does not type any conversation."

⁵ The Commission cited Worldcom's statement in its July 30, 2001 comments (p. 7) that

IP-Relay is capable of handling services such as HCO, VCO, STS, and VRS, provided the user's computer is equipped with speakers, a microphone, a sound card, a video card, or a camera. With the exception of a camera, which would be necessary for VRS, most computer systems come equipped to handle HCO, VCO, and STS. The quality of these relay services in an IP context depends heavily on the quality of the above-mentioned computer equipment.

⁶ Declaratory Ruling, ¶32 (footnotes omitted). Worldcom's July 30, 2001 comments said that waivers were necessary only for two of the mandatory minimum standards and declared in a heading in its filing (p.5) that: "With The Exception of Speed-Of-Answer and 911 Calls, Waivers From Minimum Standards Are Not Needed."

The record also demonstrates that 900 service cannot be made available via IP Relay because providers of pay-per-call services do not accept calls unless ANI is provided.⁸ Today, ANI is not available through the Internet to IP Relay providers.⁹ However, the Commission has not yet waived its holding in the Declaratory Ruling (§34) that IP Relay providers must provide 900 Services as a minimum requirement on the erroneous assumption that

where the pay-per-call service requires the use of a credit card, the CA can pass along credit card information provided by the customer. In cases of pay-per-call services that are billed by the minute, IP Relay will be able to provide the caller's telephone number to the pay-per-call service provider for billing. We find that the provision of pay-per-call services through IP Relay is another component of functional equivalency.

2. The Commission's Rules and the Statutory Requirement for "Functionally Equivalent" Services Preclude Reimbursement for IP Relay Services Unless a Provider Offers Functionally Equivalent HCO and 900 Services

While it is clear that the current record compels waiver, until these minimum standards are waived, they are a prerequisite for reimbursement that prevents Hamilton from beginning its competitive IP Relay services. The Commission's reimbursement rules could not be clearer. Section §64.604(c)(5)(iii)(E) in the mandatory minimum standards section provides the functional standards for payments to TRS providers. The rule specifies that the "TRS Fund administrator shall make payments only to eligible TRS providers operating pursuant to the mandatory minimum standards as required in §64.604."

Thus, given the record compiled on reconsideration to demonstrate that the Commission should waive HCO and 900 Service as minimum standards, the Commission should act as soon as possible to remove this bar to reimbursement. The current rules will prevent achievement of a

⁷ March 1, 2002 ex parte letter from Larry Fenster to Magalie Roman-Salas, CC Docket No. 98-67.

⁸ See, e.g., Sprint's Petition for Limited Reconsideration, CC Docket No. 98-67, pp. 1-5, filed July 11, 2002.

⁹ *Id.* at 2-3.

truly competitive IP Relay service as long as reimbursement is not lawful absent compliance with the mandatory minimum standards.

3. The Current IP Relay Market Is Seriously Distorted and Penalizes Adherence to the Commission's Rules

Hamilton has refrained from rolling out its IP Relay service while seeking waivers that authorize reimbursement. Hamilton is consequently at a great competitive disadvantage to its competitors that have been offering IP Relay for several months without complying with the HCO and 900 services mandatory minimum standards. Commission inaction and reimbursement paid to two carriers that claim to be in compliance with the technically infeasible HCO and 900 service mandatory minimum standards are preventing genuine competition, rewarding noncompliance and penalizing Hamilton for obeying the Commission's rules and the statutory requirement for functionally equivalent services.

Hamilton was aware from the outset that some of its competitors could proceed with their IP Relay Service offerings without reimbursement while the infeasible requirements stayed in effect. That is a risk of serving in a competitive market. Each carrier must make decisions that maximize its competitive position within the confines of its business plan and the regulatory requirements. Hamilton embraces the Commission's goal of a competitive IP Relay marketplace. But two providers were relieved of their assumed risk without Commission action.

NECA's February 7, 2003 comments make clear (p. 3), NECA has been reimbursing two of Hamilton's competitors for IP Relay service in reliance on their "certifications that they were meeting the Commission's requirements for the service." A third competitor has been providing IP Relay, NECA says, "but is not being paid because it has not certified that it meets the requirements." According to NECA, that third provider "may be able to be reimbursed" when the Commission has acted on the pending waiver requests. NECA also correctly notes that

another provider (Hamilton) will begin offering IP Relay when the Commission "responds positively" to the pending requests.

In a November 20, 2002 letter from Larry Fenster to Marlene Dortch, Worldcom admitted that HCO is required and infeasible, stating that "the Commission should permanently waive the requirements for IP-Relay providers to provide ... hearing carry over (HCO) ... over IP-Relay ... [because] ... competition would compel providers of IP-Relay to provide these, and additional capabilities, as soon as they became feasible." Worldcom then inconsistently claimed that HCO is not required, with the eleventh hour contention that the "Declaratory Ruling did not require this capability ... [since] ... by limiting the HCO mandate to the text leg of such a call, the Declaratory Ruling intended IP-Relay providers to make 2-line, not single-line HCO available." The reason for Worldcom's inconsistent and tardy contention emerges in its request that the Commission "reimburse providers who have been offering all mandated IP-Relay services other than HCO and pay-per-call, from the date on which they began completing IP-Relay calls."

The Commission did not authorize two-line HCO, in any event. Indeed, the Declaratory Ruling itself said (§9) some parties had argued that VCO "two line functionality" could be provided without a second line and 3-way calling. The Commission nevertheless waived VCO because of "the problems involved with providing voice access to IP Relay" – the same problems that make HCO infeasible with current technology.

Hamilton believes that the Commission must at some point deny all pre-waiver reimbursement under its existing statutory and regulatory framework to rectify the unfair, legally unsustainable and anti-competitive market structure caused by unauthorized payments. However, Hamilton urges the Commission to grant the waivers incontrovertibly supported by the

record on reconsideration, without waiting to settle the controversy over pre-waiver reimbursement payments. Granting the HCO and 900 Service waivers that are necessary before carriers are eligible for lawful reimbursement under its rules and its Declaratory Ruling is the only way to establish a fair competitive market structure going forward. Sorting out the reimbursement claims and certifications for carriers that have knowingly accepted the risk of drawing compensation without providing functionally equivalent HCO and 900 services cannot be given priority over removing the two severe competitive disadvantages for Hamilton – long delay in commencing the IP Relay Service its customers are eagerly awaiting and windfall payments to competitors.

The Commission should not lend its authority to such a travesty of justice when it reaches the pre-waiver reimbursement issues. However, the Commission's first order of business should be to remedy the damage already done to the competitive marketplace by waiving the requirements and putting all providers on an equal competitive footing going forward.

C. Conclusion

The record establishes beyond any doubt that the Commission should waive its ruling that HCO and 900 services are prerequisites to reimbursement for IP Relay services. It should act as soon as possible to open the doors of the IP Relay market to all providers and let full, fair and undistorted competition begin. The Commission can and should in the future decide the separate questions raised by reimbursement paid to providers that willingly took the risk of

noncompliance with the technically and operationally infeasible standards. For now, the most pressing IP Relay issue before the Commission is a prompt grant of the two waivers that will create the genuinely competitive market the Declaratory Ruling contemplates.

Respectfully submitted,

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February 7, 2003